

No. 9/3/87-6Lab./8726.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workmen and the management of Chief Administrator, Faridabad Complex Administration, Faridabad.

IN THE COURT OF SHRI A.S. CHALIA, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 589, 590 & 591 of 1985

between

S/SHRI OM PARKASH, SUKHBIR SINGH AND KHUSHAL SINGH WORKMEN AND THE MANAGEMENT OF CHIEF ADMINISTRATOR, FARIDABAD COMPLEX ADMINISTRATION,
FARIDABAD.

Shri S. S. Gupta, A.R. for the workmen.

None for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) the Governor of Haryana referred the Service matter between the workmen S/Shri Om Parkash, Sukhbir Singh and Khushal Singh and the management of Chief Administrator, Faridabad Complex Administration, Faridabad, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. 39138—43, 39145—50, 39152—57, dated 20th September, 1985.

2. Reference number 589 of 85 is of Om Parkash who claims that he was appointed by the respondent on 22nd April, 1982 as a Road Roller Driver and his monthly wages were Rs. 810. Second reference number 590 of 85 is of Sukhbir Singh, who also claims that he was appointed by the respondent on 21st April, 1984 as a Fire Brigade Driver and his monthly wages were Rs. 830 p.m. Third reference number 591 of 85 is of Khushal Singh, who has also claimed that he was appointed by the respondent on 29th May, 1984 as a Fire Brigade Driver and his monthly wages were Rs. 810.

3. Their allegations are that their services were terminated by the respondent,—*vide* its letter dated 28th February, 1985 on the ground that their appointments were not approved by the Haryana Government. According to them the said orders are illegal in violation of law, provisions of Industrial Disputes Act and Haryana Civil Services Rules also on the ground that they had already been in respondent's service for more than one year continuous service and as such, the same could not be dispensed with in an arbitrary manner. Moreover according to them no notice was served upon them and in lieu thereof one month's notice pay and retrenchment compensation were not paid to them and as such, the said orders are void and illegal. Accordingly they have requested to be reinstated into their job further with continuity of service and full back wages.

4. On notice, respondent filed Written Statements in each case and contested the said claims. Preliminary objection has been to the effect that the present petitions are not maintainable since Haryana Government has not been impleaded as a party and simply on that ground the references are a bad one and moreover Labour Court has no jurisdiction to entertain the said claims. It has however been admitted that Om Parkash was appointed as a Road Roller Driver while other two were appointed as Fire Brigade Drivers. However, about Sukhbir Singh it has been submitted that he was appointed on 14th December, 1984 and not on 21st April, 1984. It is also conceded that their services were terminated on 28th February, 1985. The main ground taken by the respondent is that these three employees were not possessing Matriculation minimum prescribed educational qualification for the said post of Road Roller and Fire Brigade Drivers and their cases were referred to the Haryana Government for relaxation of qualification but that was turned down and respondent had not other option but to discontinue with their services. According to it, it was the mandatory requirement of statutory rules to terminate their services. By way of replication the workmen have repeated their claims as well as allegations also.

5. On the pleadings of the parties, my learned predecessor had framed the following issue on 30th January, 1986 :—

1. As per reference.

6. From the side of respondent Purshotam Dass, Assistant had appeared and relied upon documents also. On the other hand, there are statements of three workmen.

7. I have heard Shri S.S. Gupta, Representative of workmen. No one has turned up on behalf of the respondent to argue the cases. I, hereby proposed to dispose of the case by one consolidated order since facts and law involved are common. My findings on the said issue are as below.

8. After going through the statistical data available on record about service period, I am clearly of the opinion that these employees had already completed 240 days service and as such, entitled to be termed as being in continuous service of the respondent as defined in Section 25(B) of the said Act. It has been claimed by Om Parkash that he was employed on 22nd April, 1982. This data has not been denied by the respondent in its Written Statement. However on the file appointment letter dated 26th June, 1984 Ex. R-2 has been produced to the effect that he was appointed in the pay scale of Rs. 420 to Rs. 470. Ex. W-4 has also been produced by the worker to this effect. On the file there is Ex. R-3 dated 30th June, 1983 and,—vide the same Om Parkash was appointed w.e.f. 4th April, 1983. It is more than sufficient to conclude that his service period has been of more than one year. Sukhbir Singh has claimed that he was appointed on 21st April, 1984 but respondent has taken the plea that he was appointed on 14th December, 1984. It does not appear to be correct. On the file there is appointment order dated 25th April, 1984 Ex. A-1 and according to the same Sukhbir Singh was appointed as a Fire Brigade Driver. However, there is no dispute about the service period of Khushal Singh. It is a matter of record and it can be held without any doubt that these three employees fulfil the requirement of continuous service as referred by me above.

9. In between the parties there is a serious dispute about the cause of terminating their service. The plea taken by the respondent is that they are not Matriculate which is the minimum prescribed educational qualification and their cases were referred to the Government but the same has refused to relax the minimum educational qualification. I have gone through the statements of these three workmen and find that none of them is a Matriculate. However, there is no dispute that they have valid driving licences for handling Fire Brigade Engines and Road Roller. It is a matter of regret that the respondent has not placed on record rules and regulations laying down Matriculation minimum educational qualification for the said posts. Notwithstanding the same the grievance of these workers is that like them Balbir Singh, Machineman was also a non-matriculate and his services were terminated and his case was pending in the Labour Court and Government had relaxed that qualification. If, it is so and accordingly he has been re-appointed and is still in the job. They have accordingly requested to consider the cause of discriminating the case of Balbir Singh from that of theirs. The respondent has nothing to reply and it has been conceded that Balbir Singh, Machineman was also a non-matriculate and Haryana Government has since accepted the reference and he has been retained in the job. Moreover it is a matter of record since the workman has produced on file two orders to the effect that Haryana Government has relaxed educational standard qualification and on that basis he has been re-employed. It appears that his service matter was also referred to the Labour Court and he has withdrawn the same since relief requested for has been granted by Government and respondent to him. If it is so then we must not make a different case for other co-workers. If such a situation is allowed to prevail then there is always heart burning, disappointment and frustration among the employees who unfortunately find themselves unprotected. There must be a rule of law and case of Balbir Singh can hardly be singled out to show a favour to him and deny the same to his co-workers. In view of this discussion, I am clearly of the view that orders of termination are bad on the face of it and as such, are hereby quashed. They are accordingly reinstated into their job with continuity of service and further with full back wages. The respondent is hereby directed to make the payment to them as already drawn by them with other future benefits also.

Dated 20th October, 1987.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

Endst. No. 1852, dated 21st October, 1987.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

The 23rd November, 1987

No. 9/1/87-6Lab/9081.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the management of (i) State Transport Controller, (ii) General Manager, Haryana Roadways, Ambala City.

BEFORE SHRI K. K. DODA, PRESIDING OFFICER, LABOUR COURT, AMBALA
Reference No. 32 of 1987

between
SHRI JAI BHAGWAN, WORKMAN AND THE RESPONDENT-MANAGEMENT OF (i) STATE
TRANSPORT CONTROLLER, (ii) GENERAL MANAGER, HARYANA
ROADWAYS, AMBALA CITY

Present : None.

AWARD

In exercise of the powers conferred by clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Hon'ble Governor of Haryana referred the following dispute between Shri Jai Bhagwan, workman and the respondent management of (i) State Transport Controller ;(ii) General Manager, Haryana Roadways, Ambala City, to this Court for adjudication :—

Whether the services of Shri Jai Bhagwan were terminated or that he lost lied on his job by absence from duty ? of what relief he is entitled to ?

2. The workman Shri Jai Bhagwan's case in brief is that he joined Haryana Roadways, Ambala City as helper on 1st November, 1985. On 1st December, 1985 he was promoted as Apprentice Carpenter. He worked up till 31st July, 1986. Thereafter, he was terminated without assigning any reason. He termed his termination as illegal and against the provisions of Section 25-F of Industrial Disputes Act. Principle of last come first go was also not adopted.

3. Respondent management has contested in terms of written statement filed on 8th April, 1987. Pleaded that the petitioner was appointed as helper with effect from 1st November, 1985 to 31st November, 1985,— vide order dated 17th December, 1985 on monthly wages against the special work i.e. accidental vehicles and was made clear that his services were liable to be terminated without any reason or without prior notice. The applicant had accepted the said contract of employment from 2nd August, 1986. Petitioner remained absent from duty, Petitioner was never promoted nor there was any increase in his pay. Petitioner himself remained absented from duty from 2nd August, 1986 and his services were dispensed with as a result of non renewal of contract of employment.

Petitioner workman filed replication contradicting the plea taken by the respondent and re-iterated his claim and contentions.

4. Following issues were laid down by my learned predecessor on 6th May, 1987 for decision :—

(i) Whether termination of services of the workman was illegal and un-justified, or the workman has abandoned his job ? If so, to what its effect ? (OPP).

(ii) Relief ?

5. Case came up before me for the first time on 28th July, 1987 when it was pending for evidence of the parties. Both the parties have led evidence. Workman Shri Jai Bhagwan has supported his case in his evidence, and the respondent examined Shri Amir Chand, Assistant Haryana Roadways, Ambala and Shri Richpal Singh Works Manager. Reliance has been placed on documents Exhibit M-1 to M-10 regarding the appointment of Jai Bhagwan and several others from time to time for the duration of one month.

6. Shri J.R. Sharma, represented the workman. Shri Vijay Singh, A.D.A. represented the respondent. I have gone through the pleadings and evidence on record. Learned representatives of both the parties were heard to their satisfaction. My findings on the issues with the reasons are as under :

Issue No I :

7. It stands proved from the evidence of workman Shri Jai Bhagwan and M.W. 5 Shri Amir Chand and Richpal Singh read together with the appointment orders Ex. M-1 to M-10 that the workman Shri Jai Bhagwan was appointed as helper by the respondent with effect from 1st November, 1985 and he worked up till 31st July, 1986. It clearly follows that the workman had completed 240 days service preceding the date of his termination. It is also not disputed that requisite procedure prescribed under Section 25-F of Industrial Disputes Act was not followed before termination of service of the workman.

8. I find no good ground to agree with the plea of the respondent management that the workman Jai Bhagwan abandoned his job by absenting himself from 2nd August, 1986. Jai Bhagwan has stated on oath that he continued reporting at his duty but was not allowed to join. M.W. Shri Amir Chand and Richpal Singh have admitted that no recall notice to the workman was issued on behalf of the respondent management on any day after 31st July, 1986. So much so that they had not reported to the General Manager, Haryana Roadways Ambala City about the absence of the workman. Thus the aforesaid plea of the respondent management is not at all reliable and tenable. Plea of the respondent management that services of the workman Jai Bhagwan were dispensed with as a result non-renewal of contract is also not legally maintainable. There is no evidence on record on the basis of which it could be held that appointment of the workman was for some specific period and in consequence of any mutual contract between him and the employer. In other words, there is no evidence on record to prove that the workman Shri Jai Bhagwan was appointed for a specific period on contract basis and in pursuance to a mutual agreement.

9. It is further clear from the material on record that the workman was not served with any notice of retrenchment nor was paid any retrenchment compensation. It is further clear that mandatory provisions of

Section 25-F of the Industrial Disputes Act, 1947 were not complied with by the respondent management before dispensing with the services of Shri Jai Bhagwan. MW-1 Shri Amir Chand has admitted that after the alleged absence of the workman from duty other persons were being appointed in his place. It clearly follows that there was work with the respondent for which the workman Jai Bhagwan was appointed. It clearly follows that the rule of last come first go was not applied.

10. As a consequence of discussions made above, it is held that the workman was terminated from his service and that he had not at all abandoned his job. It is further held that the petitioner workman had not absented from job but he was not allowed to join after 31st July, 1986. Retrenchment/termination of the workman is held as illegal and un-justified. Consequently, Issue No. 1 accordingly decided in favour of workman and against the respondent.

Relief :

11. In view of definite findings in favour of workman Shri Jai Bhagwan, it is held that Shri Jai Bhagwan is entitled for reinstatement with continuity in service and full back wages.

Reference is answered accordingly.

Dated the 6th October, 1987.

K. K. DODA,

Presiding Officer,
Labour Court, Ambala.

Endorsement No. 2379, dated 19th October, 1987.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of Industrial Disputes Act.

K. K. DODA,

Presiding Officer,
Labour Court, Ambala.

No. 9/1/87-6Lab./9082.—In pursuance of the provision of section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the management of (i) State Transport Controller, Haryana (ii) General Manager, Haryana Roadways, Ambala.

BEFORE SHRI K. K. DODA, PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 273 of 1985

between

SHRI SATISH KUMAR, WORKMAN AND THE RESPONDENT-MANAGEMENT OF STATE TRANSPORT CONTROLLER, HARYANA; (ii) GENERAL MANAGER, HARYANA ROADWAYS, AMBALA.

AWARD

In exercise of the powers conferred by clause (c) of sub-section(1) of Section 10 of the Industrial Disputes Act, 1947, the Hon'ble Governor of Haryana referred the following dispute between Shri Satish Kumar, workman and the respondent-management of (i) State Transport Controller, Haryana, Chandigarh; (ii) General Manager, Haryana Roadways, Ambala City to this Court for adjudication :—

Whether the termination of services of Shri Satish Kumar was justified and in order? In not, to what relief is he entitled?

2. Satish Kumar's case set up by him in his demand notice, dated 5th March, 1987, in brief, is that he was appointed as helper by the respondent w.e.f. 29th December, 1981 on daily wages and he worked uptill 4th December, 1985. On 5th December, 1985, when he reported for duty, the then concerned clerk, asked him to see the works manager. The works manager told him that he would be called and given duty in a day or two. Thereafter, he was not taken on job by the respondent. He was paid his pay on November, 1984 on 10th December, 1984, and his pay from 1st December, 1985 to 4th December, 1985 on 11th January, 1986. He approached the General Manager and the Works Manager on 4th March, 1985. It was told to him that he was being marked absent from 5th

December, 1985 and that thereafter, he would not be taken on job. Alleged his termination as illegal and against the requirements of Section 25-F of Industrial Disputes Act, 1947. He prayed for reinstatement, continuity of service with full back wages.

3. Respondent management has pleaded that workman was appointed on casual daily wages and his services on daily wages were extended from time to time by different orders. The workman Satish Kumar was not a permanent employee of the respondent. He remained absent w.e.f. 5th December, 1985 willfully, un-lawfully and without intimation of this effect. Admitted that the workman was paid upto 4th December, 1985. Admitted further that another person was appointed in place of the workman after waiting for him upto 4th January, 1985:—

4. The workman contradicted the pleas taken by the respondent and reiterated his claim. Following issues were laid down on 8th May, 1986 by my learned predecessor for decision :—

(i) Whether the termination of services of the workman is illegal and unjustified? If so, to what effect? (OPW)

(ii) Relief?

5. Workman Shri Satish Kumar supported his case in his own evidence on 4th September, 1987 and examined his co-worker Shri Parshotam Lal. Case came up before me for the first time on 28th July, 1987 when it was pending for management evidence. Management examined Shri Amir Chand, Asstt. and Richpal Singh Works Manager Reliance has been placed upon Ex. M-1 order dated 29th December, 1981,—vide which Shri Satish Kumar workman was appointed on casual basis on daily wages and copy Ex. M-2 of the order dated 31st December, 1984,—vide which the workman and several others appointed on monthly wages. with the contention that their services were liable to be terminated without assigning any reasons or notice.

6. Shri R.P. Singh, Advocate, represented the workman and Shri Vijay Singh, A.D.A. represented the respondent.

7. I have gone through the entire material on record carefully and opportunity of hearing was also given to the representatives of both the parties. My findings on the issues with the reasons are as follows :—

Issue No. 1

8. It is now not disputed that the workman Satish Kumar worked with the respondent from 29th November, 1981 to 4th December, 1984 continuously as helper. It means that he worked with the respondent for more than 3 years continuously. It is not at all the case of the respondent that the workman was ever served with show cause notice or was paid any retrenchment compensation. The only plea of the respondent management is that the workman remained absent w.e.f. 5th December, 1984 willfully and voluntarily retire from his service. Significantly, MW-1-Shri Amir Chand has admitted in his cross examination that no enquiry regarding the absence from duty was conducted against the workman. MW-2 Shri Richpal Singh Works Manager under whom the workman was working, Stated that he had never reported in writing to the G.M. against the workman regarding his absence from duty. It is not the case of the respondent that any recall letter was ever written to the workman Shri Satish Kumar. It is also not the case of the respondent-management that any enquiry was held against the workman regarding his absence from duty. It clearly follows that mandatory provisions of I.D. Act. in this behalf were not followed by the respondent-management. It is clear case of illegal retrenchment of the workman Satish Kumar. By no stretch of imagination it could be held that the termination of the workman was justified. In the result issue No. 1 is decided in favour of the workman and against the respondent management.

Relief

9. In view of definite findings of issue No. 1 in favour of workman. It is held that the termination of services of the workman Shri Satish Kumar is illegal and unjustified. It is further held that Satish Kumar is entitled for reinstatement with continuity of service with full back wages.

Reference is answered accordingly.

Dated: 6th October, 1987.

K.K. DODA,

Presiding Officer,
Labour Court, Ambala.

Endstt. No. 2380, dated 19th October, 1987.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Deptt., Chandigarh as required under Section 15 of I.D. Act.

K.K. DODA,

Presiding Officer,
Labour Court, Ambala.